

E-filed 3/7/07

STEPHEN VERNON SBN 084072
CECELIA C. FUSICH SBN 139781

VERNON LAW OFFICE
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Attorneys for Defendant
YESASIA.COM, LTD.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

U2 HOME ENTERTAINMENT, INC., a
California Corporation doing business as
NEW IMAGE AUDIO & VIDEO, CENTURY
HOME ENTERTAINMENT and TAI SENG
VIDEO ENTERTAINMENT

Plaintiff,

v.

YESASIA.COM, LTD., a business entity
form unknown; AND DOES 1-200
INCLUSIVE,

Defendants.

Case No. C-06-7182-JF

**DEFENDANT YESASIA.COM'S EX
PARTE APPLICATION FOR
EXTENSION OF TIME TO RESPOND
TO COMPLAINT;**

**MEMORANDUM IN SUPPORT
THEREOF;**

**DECLARATION OF CECELIA C.
FUSICH, ESQ. IN SUPPORT
THEREOF;**

**[PROPOSED] ORDER; and
PROOF OF SERVICE**

Application

Defendant YesAsia.com ("YesAsia.com" or "Defendant") hereby applies *ex parte* for a one-month extension of time within which to respond to Plaintiff U2 Home Entertainment, Inc.'s ("U2" or "Plaintiff") Complaint, **commensurate with the Court's extensions of other early case-management deadlines.** (See Fed. R. Civ. Proc. 6(b); N.D. Cal. Civ. L.R. 7-10.)

The Complaint was filed on November 2, 2006. On December 5, 2006, Plaintiff mailed its Summons and Complaint and Notice of Lawsuit and Request for Waiver of Service of Summons to Defendant in Hong Kong. Because Defendant YesAsia.com is outside the United States, Defendant has at least ninety days, or until March 4, 2007, to respond to Plaintiff's Complaint. (See Fed. R. Civ. Proc. 4(d).) With a one-month extension of time, the deadline would therefore be extended to at least April 4, 2007. As set forth below, good cause exists for the Court to grant the extension.

Memorandum

A federal district court has the authority to extend the time for a party to file a response to a complaint. (See Fed. R. Civ. Proc. 6(b).) That party must request the extension prior to the expiration of time originally prescribed. (*Id.*) If the request is made **after** the deadline to respond has passed, then the requesting party must proceed by regular, formal noticed motion and must demonstrate "excusable neglect." But if, as here, the request is made **before** the deadline to respond has passed, then the requesting party may proceed *ex parte* (unless the court requires otherwise) and need only show "cause." (Fed. R. Civ. P. 6(b). See generally William W. Schwarzer, *et al.*, *Federal Civil Procedure Before Trial* at ¶ 12: 172 (The Rutter Group 2006).

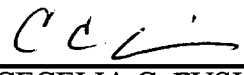
Here, YesAsia.com requests a commensurate, one-month extension to respond to Plaintiff's Complaint. YesAsia.com is a corporation located outside the United States which has only recently hired United States trial counsel to appear in this matter. Counsel for Defendant telephoned Plaintiff's attorney on February 21, 2007, and requested a 3-week extension of time in which to respond to the Complaint. (Declaration of Cecelia C. Fusich, Esq. in support of

1 Defendant's *Ex Parte* Application to Respond to Complaint, ¶ 4 ("Fusich Decl.") Counsel for
2 Plaintiff stated that he needed to speak to his client before granting such an extension. (*Id.* at
3 5.)

4 Meanwhile, the parties requested and the Court granted a one-month extension on other
5 early case-management deadlines. As time is running short and not having heard from
6 Plaintiff's counsel, Defendant seeks a extension of time from the Court to file a responsive
7 pleading to the Complaint. Such an extension would also be in the interests of allowing the
8 parties to discuss settlement as counsel for defendant has initiated these discussion in the past
9 week.

10 Accordingly, YesAsia.com respectfully requests, pursuant to Federal Rule of Civil
11 Procedure 6(b), that the Court extend, by one month, the time for YesAsia.com to file a
12 response to the Plaintiff's Complaint.

13 Respectfully submitted,
14 Dated: March 1, 2007 VERNON LAW OFFICE

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16 By 
17 CECELIA C. FUSICH
18 Attorneys for Defendant
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Declaration of Cecelia C. Fusich, Esq.


I, Cecelia C. Fusich, hereby declare as follows:

1. I am an attorney at law in good standing and licensed to practice law in all of the courts of the State of California, including this Court, the U.S. District Court for the Northern District of California.
2. I am an attorney with Vernon Law Office, and as an attorney of record for the defendant herein, YesAsia.com.
3. As a result of my work as one of the attorneys of record for the defendant in this action, I have personal knowledge of the matters stated herein and could and would competently testify thereto if called upon to do so.
4. On Wednesday, February 21, 2007, I telephoned counsel for plaintiff U2 Home Entertainment to request an extension of time to respond to the Complaint. Plaintiff's counsel stated that he needed to confer with his client before granting such a request but noted that such an extension was unlikely given the time elapsed between filing the complaint and the waiver of service to a foreign corporation. Subsequently, the parties' request to extend the case management conference and associated deadlines was granted.
5. On Wednesday, February 28, 2007, I telephoned plaintiff's counsel to determine if he would enter into a stipulation to extend time to respond to the complaint. Because Mr. Idell was not in the office, I left him a voice mail message reiterating my request and giving him notice that on Thursday, March 1, 2007, I would be applying *ex parte* for a 30-day extension with this Court. I gave plaintiff's counsel written notice of YesAsia.com's intent to file this *ex parte* application as well. (A true and correct copy of the letter and fax confirmation sheet are attached hereto as EXHIBIT A.)
6. At 5:50 p.m. on the evening of February 28, 2007, counsel for plaintiff faxed me a letter indicating that he was "prepared to discuss with [me] the extension of time that [I was] asking for." Mr. Idell was not prepared to provide us with a 30-day extension. Rather, he indicated that he could only offer us a two week extension of time in which to respond

1 to the complaint. (A true and correct copy of the letter and fax confirmation sheet are
2 attached hereto as EXHIBIT B.)

3 7. On March 1, 2007, I spoke with counsel for the plaintiff, Richard Idell. He stated that he
4 would be willing to grant us a two-week extension to file a response to the complaint. Mr.
5 Idell further stated that he would not oppose our application for a thirty-day extension
6 should we choose to file such.


7 I declare, under penalty of perjury under the laws of the United States and of the State of
8 California that the foregoing is true and correct. Dated March 1, 2007 in the City of Palo Alto,
9 County of Santa Clara, State of California.

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12 _____
13 Cecelia C. Fusich
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[Proposed] Order

Having considered YesAsia.com's ex parte application for Extension of Time to Respond to the Plaintiff's Complaint and good cause having been shown, the Court hereby GRANTS YesAsia.com's application and extends the time to respond by one month pursuant to Federal Rule of Civil Procedure 6(b).

Dated: March 7, 2007



District Judge Jeremy Fogel.
United States District Court
Northern District of California

U2 Home Entertainment v. YesAsia.com, Ltd.
United States District Court for the Northern District of California
Case No. C-06-7182-JF
PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California, am over the age of eighteen (18), am not a party to this action, and my business address is Vernon Law Office, 2300 Geng Road, Suite 200, Palo Alto, California 94303.

On March 1, 2007, I served the following:

DEFENDANT'S *EX PARTE* APPLICATION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT;

MEMORANDUM IN SUPPORT THEREOF;

DECLARATION OF CECELIA C. FUSICH, ESQ. IN SUPPORT THEREOF;

[PROPOSED] ORDER

☐ (BY MAIL) I caused above-named document(s) to be enclosed in sealed envelope(s) with postage thereon fully prepaid and addressed as stated on the attached service list, and to be deposited in the United States Mail at Lafayette, California.

☐ (BY PERSONAL DELIVERY) I caused the above-named document(s) to be personally hand delivered to each addressee listed on the attached service list.

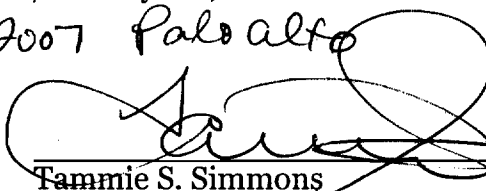
☒ (BY FACSIMILE) I caused the above-named document(s) to be transmitted *via* facsimile to each addressee's facsimile number as listed below:

☐ (BY FEDERAL EXPRESS) I caused the above-named document(s) to be sent *via* Federal Express for overnight delivery to each addressee listed below:

I declare under penalty of perjury under the laws of the United State of America and the State of California that the above is true and correct.

Executed on ~~February 24, 2007~~ at Lafayette, California.

March 1, 2007 Palo Alto


Tammie S. Simmons

SERVICE LIST

U2 Home Entertainment v. YesAsia.com, Ltd.
United States District Court for the Northern District of California
Case No. C-06-7182-JF
PROOF OF SERVICE

Richard J. Idell, Esq.
Idell & Seitel LLP
Merchants Exchange Building
465 California St., Suite 300
San Francisco, California 94104
Fax (415) 392-9259

TRANSMISSION VERIFICATION REPORT

TIME : 03/01/2007 12:31

DATE, TIME	03/01 12:27
FAX NO./NAME	14153929259
DURATION	00:04:12
PAGE(S)	14
RESULT	OK
MODE	STANDARD
	ECM

EXHIBIT A

Declaration of Fusich - Ex Parte Application

U2 v. YesAsia

VERNON LAW OFFICE

CECELIA C. FUSICH

2300 GENG ROAD, SUITE 200
PALO ALTO, CALIFORNIA 94303

TEL: (650) 493-8483
FAX: (650) 493-6160

February 28, 2007

By Fax (415 392-9259)

Richard J. Idell, Esq.
Idell & Seitel LLP
Merchants Exchange Building
465 California St., Suite 300
San Francisco, California 94104

Re: *U2 Home Entertainment, Inc. v. YesAsia.com Ltd.*

Dear Mr. Idell:

We have not received a response from you to our request for an extension of time to respond to the summons and complaint in this case, commensurate with the Court's subsequent continuance of other case management deadlines.

If you do not consent, we intend to file an ex parte application for a thirty-day extension of time to respond tomorrow, March 1, 2007. Please inform me, no later than Wednesday by the close of business day, February 28, 2007, whether you consent to the request.

I look forward to hearing from you. If I have left for the day, please feel free to leave your message with our paralegal, Tammie S. Simmons.

Sincerely,



Cecelia C. Fusich

CCF:ts

TRANSMISSION VERIFICATION REPORT

TIME : 02/28/2007 13:53

DATE, TIME	02/28 13:53
FAX NO./NAME	14153929259
DURATION	00:00:24
PAGE(S)	01
RESULT	OK
MODE	STANDARD
	ECM

EXHIBIT B

Declaration of Fusich - Ex Parte Application

U2 v. YesAsia

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Richard J. Idell*
Owen Seitel

Of Counsel:
Terri Hanley

Patricia De Fonte
Ory Sandel
Elizabeth J. Rest

*A Law Corporation

FACSIMILE COMMUNICATION

February 28, 2007

To: Cecelia C. Fusich
Fax: 650-493-6160
Tel:
From: Richard Idell
Contact: Stephanie
Re: U2 v. YesAsia.com

No. of Pages: 2
(including the cover page)

MESSAGE:

NOTE: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address. Thank you.

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Richard J. Idell*
Owner Seitel

Patricia De Fonte
Ory Sandel
Elizabeth J. Rest

Of Counsel:
Terri Hanley

Writer's email:
richard.idell@idellseitel.com

*A Law Corporation

February 28, 2007

VIA FACSIMILE (650-493-6160)

Cecelia C. Fusich
Vernon Law Office
2300 Geng Road, Suite 200
Palo Alto, CA 94303

Re: U2 Home Entertainment, Inc. v. YesAsia.com Ltd.
Action Number: C06-07182 JF

Dear Ms. Fusich:

This letter is in response to your letter of February 28, 2007.

I have spoken to my client and I am prepared to discuss with you the extension of time that you are asking for.

I left a message on the voicemail at your office which answered as Stephen Vernon's voicemail.

I am in the office and will be here probably for about 2 hours or until about 7:00 p.m.

Very truly yours,

IDELL & SEITEL LLP

Richard J. Idell

RJI:sh